

1 the three regional sports network at issue in  
2 this case?

3 A That's correct.

4 Q Now let's go to the next page,  
5 page three. And can you scan down that page  
6 and tell me if there is any system on this  
7 page that does not carry either CSN Philly or  
8 CSN MA?

9 A I don't see any.

10 Q Now can we go to the next page --  
11 so just to confirm, so every system on that  
12 page distributes either a CSN Philly RSN or  
13 the CSN MA RSN, correct?

14 A Yes.

15 Q Now if we could go to page four,  
16 and I'd ask you to do the same thing.

17 MR. KIRK: Objection. I think  
18 you've mischaracterized page three.  
19 Lewistown.

20 JUDGE SIPPEL: Lewistown?

21 MR. FREDERICK: Lewistown,  
22 Pennsylvania. Mr. Ortman, we both missed that

1 one.

2 THE WITNESS: It's on there

3 twice.

4 MR. FREDERICK: Okay.

5 THE WITNESS: No, I'm sorry,  
6 Levitown and Lewistown, they are very similar  
7 looking. Go ahead.

8 BY MR. FREDERICK:

9 Q They are confusing names because  
10 they look close to each other, correct?

11 A You're right, I'm sorry.

12 Q Let's talk about Lewistown. Do  
13 you have a reason as to why Lewistown,  
14 Pennsylvania, does not carry any of the three  
15 RSNs at issue in this case?

16 A I don't.

17 Q Okay. Is it possible that the  
18 Lewistown, Pennsylvania system has been rolled  
19 into some other system?

20 A It's possible, or it's possible  
21 that it was a recent acquisition and we don't  
22 carry any of the networks they have.

1 Q Okay. Do you have any knowledge  
2 about the Lewistown system?

3 A Not personally.

4 Q So you have no information about  
5 the size of that system?

6 A I believe it was a very small  
7 system, but beyond that I don't know.

8 Q Now by very small can you give me  
9 a rough ballpark of how many subscribers it  
10 might have?

11 A [REDACTED].

12 Q So in the Comcast world that is a  
13 relatively small system?

14 A Yes.

15 Q Leaving aside the Lewistown  
16 system, and I thank you, Mr. Kirk, for  
17 correcting me about page three; let's move to  
18 page four. Can you identify any systems on  
19 this list that do not carry either CSN Philly  
20 or CSN MA?

21 A Madison.

22 Q Okay, let's talk about -- let's

1 identify them all first if we could.

2 A Sequoia.

3 Q Okay.

4 A I believe those are the only two.

5 Q Okay. Let's first talk about  
6 Madison. Do you know why Madison does not  
7 carry any of the three RSNs at issue in this  
8 case?

9 A I don't.

10 Q Do you know the size of the  
11 Madison system?

12 A Probably very small.

13 Q By very small do you mean less  
14 than a couple of thousand?

15 A Yes, I do.

16 Q Okay, how about the Sequoia  
17 system, do you know why the Sequoia System  
18 does not carry any of the three RSNs at issue  
19 in this case?

20 A Sequoia was a property acquired  
21 from Mid-Atlantic Communications nearly 10  
22 years ago, and it is in the middle of Fairfax

1 County, I believe; it's not in our franchise  
2 area. The previous owner did not carry CSN  
3 MA, obviously can't carry CSN in Philadelphia.

4 Q Okay, so Sequoia would be an  
5 example of a system that is also not carrying  
6 MASN; is that correct?

7 A Correct.

8 Q And it is within the Fairfax  
9 County area?

10 A I don't know precisely where it  
11 is, but it's not within one of our franchise  
12 areas; it's a stand-alone property we  
13 acquired.

14 Q I see, but Fairfax County is very  
15 close to Washington, D.C., is it not?

16 A Yes.

17 Q So Sequoia, within Fairfax County,  
18 is not carrying MASN, correct?

19 A Nor CSN MA nor CSN Philadelphia.

20 Q Now earlier I believe you  
21 testified the distance to the ballparks was  
22 one of the factors that you took into account

1 in deciding whether or not MASN should be  
2 launched; is that correct?

3 A Yes.

4 Q Do you regard Fairfax County as a  
5 long distance away from Washington, D.C.?

6 A No, it's in the Washington, D.C.  
7 DMA.

8 Q So what is the explanation for why  
9 Sequoia has not launched MASN?

10 A Bandwidth would be my guess. The  
11 bandwidth is not indicated on this list, but  
12 what we excluded were systems of 450 megahertz  
13 or less.

14 Q All right. Just sitting here  
15 today, sir, do you have knowledge as to what  
16 the bandwidth of the Sequoia system is?

17 A It's less than -- 450 or less.

18 Q Thank you.

19 Now on page five --

20 JUDGE SIPPEL: This list excludes  
21 any carrier than had 450 megahertz or less?

22 THE WITNESS: This list includes

1 at least one, Sequoia.

2 JUDGE SIPPEL: Yes. So this may  
3 have -- some of these -- all right, I thought  
4 I heard -- all right never mind. Go ahead.

5 BY MR. FREDERICK:

6 Q Mr. Ortman, to help clarify for  
7 the Court, this list to your knowledge  
8 represents every system in Comcast's footprint  
9 for those three RSNs regardless of the size of  
10 the megahertz, or regardless of the size of  
11 the bandwidth?

12 A I can't swear to that, no. I need  
13 to compare it to my reports. This is a  
14 foreign report to me. I saw it in the  
15 deposition, but I would need to line it up  
16 next to ones with which I am a little more  
17 familiar to give you a complete answer to that  
18 question.

19 Q All right. Is it reasonable to  
20 infer that Comcast gave its economic expert  
21 accurate information for use in this  
22 litigation?

1           A       If you are telling that you gave  
2   this to our economic expert, I'll take your  
3   word for it. But I know there is -- I'm  
4   seeing a few familiar names on here that I  
5   know are low bandwidth and in the Baltimore-  
6   Washington DMA. So I'll assume that that's  
7   correct.

8           Q       That was not my question. My  
9   question was, is it reasonable to infer that  
10  Comcast gave its economic expert accurate  
11  information for use in this litigation?

12          A       That's reasonable to assume.

13          Q       Thank you. Now apart from the  
14  Sequoia system and the Madison system, are  
15  there any other systems that do not carry any  
16  of the three RSNs in the territory --  
17  actually, there are three -- let me strike  
18  that. Let me start that over. I think we  
19  identified three, correct, Lewistown, Madison  
20  and Sequoia. Is that correct?

21          A       That's what we had identified.

22          Q       Okay. And the Ocean County Brick



1     MOU.

2           A       Right.

3           Q       But the Ocean County Brick MOU you  
4     believe is no -- does not exist any longer,  
5     correct?  As a separate system?

6           A       Because there is another one on  
7     the lineup that says Ocean County; that's a  
8     same assumption, yes.

9           Q       Okay.  So to be conservative about  
10    this, we can identify four Comcast systems on  
11    the entire list that do not carry any of the  
12    three RSNs; is that fair?

13          A       That's fair.

14          Q       Okay, now as to the three that you  
15    know something about, the ones we just  
16    identified, Lewistown, Madison and Sequoia,  
17    those you believe are very small systems?

18          A       I do believe.

19          Q       Now with respect to every other  
20    system, Comcast carries either CSN Philly or  
21    CSN MA; is that correct?

22          A       Yes.

1           Q       Okay. Now in those columns in the  
2 first column representing MASN, are there not  
3 a large number of systems that contain a zero?

4           A       Yes, there are several. New  
5 Jersey and some in Pennsylvania and some in  
6 Virginia and one in Maryland.

7           Q       So it's a fact, is it not, that if  
8 this system is correct, if the system list is  
9 accurate, these are the systems in Comcast's  
10 footprint that do not carry MASN?

11          A       Yes.

12          Q       And if you compare the list of  
13 those that do not compare -- that do not carry  
14 MASN with the other two columns, a CSN product  
15 is carried in every single one of those except  
16 the three that we discussed; is that correct?

17          A       That's correct.

18          Q       Thank you.

19                   So am I correct in stating that  
20 from this MASN Exhibit No. 70 very close to  
21 100 percent of all Comcast systems carry CSN  
22 Philly or CSN MA?

1 A One or the other.

2 Q Yes.

3 A Yes.

4 Q Very close to 100 percent?

5 A Yes.

6 Q Not quite 100 percent, but very  
7 close to 100 percent. And am I correct that  
8 one could count up the number of systems that  
9 do not carry MASN and likely achieve a  
10 percentage of approximately [REDACTED]?

11 A It's my understanding, yes.

12 Q When I asked you about double  
13 standards, is it correct that Comcast carries  
14 in virtually 100 percent of its systems a CSN  
15 Philly or CSN MA product?

16 A I'm sorry, could you repeat the  
17 question?

18 Q Is it a fact that Comcast carries  
19 in nearly 100 percent of its systems CSN MA or  
20 CSN Philly?

21 A Yes, what's the follow up  
22 question?

1 Q All right, the follow up question  
2 is, is [REDACTED] the same as nearly [REDACTED]  
3 [REDACTED]?

4 A Obviously not. But your question  
5 was about double standards. The question I'm  
6 assuming you're asking is, did we apply a  
7 different standard. And the answer is no. It  
8 all came back to bandwidth, cost and  
9 popularity of the content.

10 Q I understand. Now isn't it true  
11 that Comcast has a double standard with MASN  
12 with respect to [REDACTED]?

13 A I'm not sure I understand the  
14 question.

15 Q Okay. [REDACTED]  
16 [REDACTED]?

17 A [REDACTED] [REDACTED]  
18 [REDACTED].

19 MR. KIRK: Objection, Your Honor.  
20 He hasn't testified, there is nothing in his  
21 written testimony [REDACTED].

22 MR. FREDERICK: Your Honor, this

1 is cross-examination. At his deposition he

2 was asked a question, question: [REDACTED]

3 [REDACTED]

4 [REDACTED] ? Answer:

5 [REDACTED].

6 [REDACTED]

7 [REDACTED] [REDACTED]. There is no

8 basis for an objection. This is cross-

9 examination, and I'm simply asking whether his

10 testimony is consistent with his deposition.

11 JUDGE SIPPEL: He said no in both

12 instances. He said no.

13 MR. FREDERICK: Yes.

14 JUDGE SIPPEL: I'll overrule the

15 objection.

16 BY MR. FREDERICK:

17 Q [REDACTED]

18 [REDACTED]

19 [REDACTED] ?

20 A [REDACTED]

21 Q [REDACTED]

22 [REDACTED] ?

1 A [REDACTED]

2 [REDACTED]

3 Q [REDACTED]

4 [REDACTED]

5 A [REDACTED]

6 [REDACTED] There's all kinds of

7 [REDACTED]

8 Q [REDACTED]

9 [REDACTED]

10 A [REDACTED]

11 Q You don't know whether Comcast --

12 A I don't. I think I've answered

13 that. I don't know, [REDACTED]

14 [REDACTED]

15 Q [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 A [REDACTED]

19 JUDGE SIPPEL: I take it you are  
20 asking him if he does not know of his personal  
21 knowledge; is that --

22 MR. FREDERICK: That's correct.

1 JUDGE SIPPEL: You got an idea  
2 about that, don't you?

3 THE WITNESS: We don't -- in the  
4 field we don't see [REDACTED] -- for  
5 anybody.

6 JUDGE SIPPEL: It's personal  
7 knowledge that we are establishing here.

8 MR. FREDERICK: All right.

9 BY MR. FREDERICK:

10 Q [REDACTED]

11 [REDACTED]

12 [REDACTED]?

13 A [REDACTED].

14 Q [REDACTED]

15 [REDACTED]

16 [REDACTED]?

17 A [REDACTED].

18 Q But you are in charge of  
19 programming for the eastern division of  
20 Comcast; correct?

21 A That's correct.

22 Q And you think that [REDACTED]

1 critically important between Comcast and its  
2 programming vendors; correct?

3 A They are an important component of  
4 a relationship.

5 Q Now, you think that MASN should be  
6 held to its contract with Comcast; correct?

7 A Yes.

8 Q Okay, if a benefit in Comcast's  
9 contract with MASN exists -- strike that.

10

11

12

13

A

14

Q

15

16

17

A

18

19

Q

20

21

A

22



1 Q [REDACTED]

2 [REDACTED]

3 [REDACTED]?

4 MR. KIRK: Objection, Your Honor.

5 He said he didn't know. He's

6 mischaracterizing.

7 JUDGE SIPPEL: I'm with you on

8 that. I'll sustain that.

9 BY MR. FREDERICK:

10 Q [REDACTED]

11 [REDACTED]

12 [REDACTED] that would constrain the relationship  
13 between those two entities, is that correct?

14 MR. KIRK: Objection.

15 JUDGE SIPPEL: I'll sustain that  
16 objection, too. [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED].

20 MR. FREDERICK: Your Honor, let  
21 me ask some foundational questions.

22 BY MR. FREDERICK:

1           Q       Mr. Ortman, are you aware that  
2    MASN asked for documents from Comcast in this  
3    litigation?

4           A       I would have no knowledge of that.

5           Q       Were you asked to prepare and  
6    produce documents from your files for this  
7    litigation?

8           A       I don't believe so.

9           Q       You are the head of programming  
10   for the eastern division and you were not  
11   asked about any documents in your files, sir?

12          A       I was not part of the negotiation  
13   of the contract.

14          Q       I'm asking you a different  
15   question, sir. Were you asked to produce  
16   documents in this litigation?

17          A       No.

18          Q       The lawyers for Comcast never  
19   asked you to produce documents from your files  
20   for this litigation; is that correct?

21          A       No. Not that I recall.

22                   JUDGE SIPPEL:   Is there any

1 lawyer internal to Comcast, or that is  
2 Comcast's lawyer or their designee, paralegal  
3 or something, that went through your records?

4 THE WITNESS: My computer was  
5 taken and gone through looking for emails.

6 JUDGE SIPPEL: Do you have a hard  
7 copy file in your office?

8 THE WITNESS: Yes, I do.

9 JUDGE SIPPEL: Everything that  
10 you do business -- is there a destruction  
11 program, a person will come to your computer?

12 THE WITNESS: There is a document  
13 retention policy at the company, yes.

14 JUDGE SIPPEL: Can you explain  
15 what that is?

16 THE WITNESS: Emails are purged  
17 off the system after about 45 days.

18 JUDGE SIPPEL: Any other  
19 documents kept? Do you download or something  
20 documents like agreements or something like  
21 that?

22 THE WITNESS: No. They're there,

1 they're on the shared directory. And then the  
2 lawyers did come and scan my computer for  
3 anything.

4 MR. FREDERICK: Your Honor, let  
5 me ask this.

6 BY MR. FREDERICK:

7 Q Mr. Ortman, are you familiar with  
8 the written contract between MASN and Comcast?

9 A I am.

10 Q And I believe you testified that  
11 you have never seen a programming vendor's  
12 contract with Comcast.

13 A No, I said generally I don't see  
14 them. I see a few that are uniquely relevant  
15 to my footprint with unique immediate  
16 obligations, wrinkles, nuances, things that I  
17 need to worry about.

18 Q [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]?

22 A [REDACTED]

1 [REDACTED]

2 Q And you don't regard as [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]?

7 A [REDACTED]

8 [REDACTED]. Would you try that again?

9 Q Yes. You don't think there is a  
10 [REDACTED] that you, Mr. Ortman, in

11 charge of the eastern division, thinks MASN

12 should be [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]?

16 A [REDACTED]

17 [REDACTED] I think of it as two different sets

18 of circumstances in dealing with both

19 networks. But they both get treated the same.

20 Q Isn't it true that Comcast has a

21 double standard with MASN with respect to

22 split fees?

1           A       Totally different technology, so  
2   no, there is no double standard. Comcast  
3   Sports Net Mid-Atlantic has had a fiber  
4   relationship with Comcast Cable for many  
5   years, dating back to when it was still on  
6   Team Sports, so it could deliver Orioles games  
7   to Baltimore.

8           Q       You know what split feeds are,  
9   right?

10          A       I do.

11          Q       And you know that split feeds are  
12   when a programmer wants to send different  
13   signals to different markets, correct?

14          A       Yes.

15          Q       And split feeds can enable a  
16   programmer to reach different markets with  
17   advertising; correct?

18          A       Not just advertising. When split  
19   feed was created by Comcast Sports Net --

20          Q       Mr. Ortman, I just asked you a yes  
21   or no question. With respect to advertising,  
22   you know that split feeds can enable a

1 programmer to reach different markets; yes or  
2 no?

3 A That is correct.

4 Q And my next question is, split  
5 feeds can also enable a programmer to send  
6 programming to different markets --

7 A Which was the original genesis of  
8 split fee --

9 Q -- yes or no?

10 JUDGE SIPPPEL: Wait a minute.  
11 You both can't talk together, because the  
12 reporter can't do that.

13 BY MR. FREDERICK:

14 Q Mr. Ortman, if I ask you a yes or  
15 no question I'd like you to just answer it yes  
16 or not, and if there is more than I want you  
17 to explain, I'll ask you for it.

18 A Your first question was can it  
19 allow advertising to be separate. The answer  
20 is yes. And can it allow programming to be  
21 separate? The answer is yes.

22 Q Thank you. You embarked with CSN

1 MA in doing split feeds in the mid-2000s or  
2 before, is that correct?

3 A Correct.

4 Q In 2007 you became aware of MASN  
5 wanted to do split feeds; correct?

6 A Correct.

7 Q And when MASN wanted to do split  
8 feeds, you looked at the carriage contract  
9 between Comcast and MASN, correct?

10 A Yes, I did.

11 Q And you didn't think MASN had a  
12 right to do split feeds under the contract,  
13 correct?

14 A That is correct.

15 Q But you never looked at the CSN MA  
16 contract to see whether CSN MA could do split  
17 feeds, correct?

18 A Because there was a pre-existing  
19 fiber arrangement. I had no cause to look, or  
20 even ask.

21 Q You never looked at the CSN MA  
22 contract to determine whether it permitted CSN



1 MA to do split feeds; is that correct?

2 A That's correct.

3 Q Comcast Spotlight is the name of  
4 Comcast's local ad sales organization;  
5 correct?

6 A Correct.

7 Q Comcast Spotlight is affiliated  
8 with Comcast; correct?

9 A Correct.

10 Q It mattered to you whether MASN  
11 could do split feeds because that would hurt  
12 Comcast Spotlight; correct?

13 A No, that wasn't the motivation.

14 Q Mr. Ortman, in your deposition you  
15 were asked, question: Why was it  
16 inconsequential to you when it was with  
17 Comcast Mid-Atlantic?

18 Answer: Because the party that is  
19 injured by split fees is our local sales ad  
20 group. Since the local ad sales groups was  
21 repped the time for both Comcast cable and  
22 Comcast Sports Net which Spotlight was doing